

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

08-CR-6274L

v.

JOEL IRIZARRY,

Defendant.

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Defendant Joel Irizarry pleaded guilty pursuant to a plea agreement (Dkt. #15) on December 22, 2008. Pursuant to that plea agreement, he was sentenced on February 24, 2009, principally to an aggregate sentence of seventy (70) months imprisonment. In the plea agreement, he also agreed to forfeit his right, title or interest in a 2002 Black Jaguar, registered to one Pamela Kuras, and a final order of forfeiture to that effect (Dkt. #24) was filed on June 2, 2009.

Thereafter, defendant filed a *pro se* motion (Dkt. #36) requesting return of property, the 2002 Jaguar motor vehicle, pursuant to FED. R. CRIM. P. 41(g). The Government filed a response (Dkt. #39) to the motion.

For the reasons stated in the Government's response in opposition to the motion, defendant's motion for the return of property pursuant to Rule 41(g) is in all respects denied. First of all, in the plea agreement, the defendant specifically agreed to forfeiture of the motor vehicle as an item used to facilitate the offenses of conviction. Based on that section of the plea agreement, both preliminary and final orders of forfeiture were entered as to Irizarry's interest in the vehicle.

Furthermore, I agree with the Government that Irizarry's present request, which is brought not on his behalf but on behalf of Pamela Kuras, is not proper. Irizarry may not proceed on behalf

of a third party. Also, as appears in the Government's response, civil forfeiture proceedings were commenced and Ms. Kuras received proper notice of the forfeiture action and the right to file a claim. No claim was filed or any other action taken by her relative to the motor vehicle in question, and it was, therefore, forfeited to the Government.

CONCLUSION

Defendant Joel Irizarry's motion (Dkt. #36) to return property pursuant to FED. R. CRIM. P. 41(g) is in all respects denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
May 25, 2011.